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## **Social security protection of the self-employed persons in Hungary<sup>\*</sup>**

### *Introduction*

The Hungarian economy is characterized by a strange duality from a sector and ownership aspect, and from the point of view of regional distribution alike. On the one hand, the larger part of GDP and exports are generated by a handful of large companies predominantly in foreign ownership with strong export-orientation, concentrated in an „island of modernization”. On the other hand, the contribution to GDP and exports of mostly Hungarian owned micro-, small and medium-sized enterprises, accounting for most of the approximately 800,000 companies and sole proprietorships operating in Hungary, falls well below the weight of this sector in employment terms.

One of the attendant phenomena of duality in the economy is that the ratio of self-employment is high within the entrepreneurial sector in Hungary. (see *Table 1* in Appendix) The fact that sole proprietors account for 58% of the Hungarian entrepreneurial sector projects the phenomenon of self-employment, which is often termed as „involuntary entrepreneurship” in Hungary.

This article deals with the legal status and phenomena of self-employed persons within the sphere of Hungarian social security law.

### *1. The meaning of self-employment in Hungary*

#### *1.1. The meaning of self-employed under the Hungarian social insurance legislation*

In Hungary there isn't a general concept of self-employment. According to the recent EU trends, which are followed in Hungary as well, every person, who is pursuing work other than employment contract is considered self-employed. According to the personal scope of the Hungarian social insurance system the majority of them are totally insured persons, which means they are entitled to every social insurance benefit. However, there are some categories of self-employed who are excluded from the general social insurance scheme, but they can voluntarily conclude contract with the social insurance organization

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<sup>\*</sup> A tanulmány az OTKA T 032188 nyilvántartási számú kutatás keretében jött létre.

to get benefits. However, self-employed persons are completely excluded from unemployment insurance (in cash type) benefits.

In terms of the Social Insurance Law Art 4 self-employed entrepreneurs are:

- natural persons having venture certificate,
- natural persons operating health and social undertaking, performing medical, clinical, - psychological, private veterinary and other kinds of health, social, pharmaceutical private activity,
- persons performing individual lawyer's activity,
- individual patent attorney,
- notary,
- independent judicial bailiff.

Insurance of the self-employed entrepreneur is in force

- from the date of receipt of the venture certificate until the date of its return, withdrawal or inuring of the resolution on prohibition from his activity,
- in case of individual lawyer and patent attorney from the starting date of membership of the Bar Association until the date of its termination,
- in case of notary, independent judicial bailiff from the starting date of service until the date of its termination.

There is a special group of self-employed. They are the so-called self-employed entrepreneurs who pursue complementary activity (*kiegészítő tevékenység*).<sup>1</sup> In sum, they are retired persons who start a self-employment-type business as individual entrepreneurs or take part in company activity on entrepreneurial basis.

### *1.2. Self-employed foreign citizens*

Act LXXII of 1998 provides only a regulatory framework enabling in general non-Hungarian citizens to be established in Hungary as self-employed persons. In this matter the provisions of Act V of 1990 on the Establishment of Individuals as Self-employed Persons, the Act on Foreign Exchange (Act XCV of 1995) and the Act on Companies (Act CXLIV of 1997) are of great importance.

Article 2 of Act V of 1990 on the Establishment of Individuals as Self-employed Persons qualifies as self-employed activity production or service activities of natural persons performed in a businesslike manner (i.e. for recompense, in order to gain profit and acquire assets). Individuals may only be established as self-employed persons (with the exemption of agricultural production and services) with the possession of an entrepreneur's authorisation given by the relevant administration office. Self-employed persons as natural persons are not obliged to be registered by the Court of Registry. Self-employed persons are released from the obligation to ensure the required equity capital which must be ensured otherwise, e.g. when establishing a one-person limited liability company according to the Act on Companies. However, self-employed persons are

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<sup>1</sup> According to the social insurance law, "*no complementary activity* is when the self-employed entrepreneur is qualified as insuree if he/she performs his/her activity as main occupation and not as a pensioner with own entitlement for old-age or he/she receives widow's pension but hasn't accomplished the retiring age. (In other words, he/she is pursuing entrepreneurship on complementary activity basis, if he/she is pensioner.)

liable towards creditors without limitation. Nevertheless, if a self-employed person chooses the form of a firm („egyéni cég”) he/she must apply to the Court of Registry to enter his/her firm in the trade register. A self-employed person should be entered in the trade register as a firm, this fact won't create a legal entity independent from the self-employed person. Self-employed persons may take part in the foundation of a limited liability company, may be a silent partner in a limited partnership and may buy shares in accordance with the legal provisions referring to natural persons. Self-employed persons still have this right due to natural persons even if they have been registered in the trade register as a firm. The Act on the Establishment of Individuals as Self-employed Persons declares, however, if a natural person is established him/herself as a self-employed person, he/she may not be at the same time a company's member with unlimited liability. A self-employed person registered as a firm has the possibility to be transformed later into a one-person shareholding company or a one-person limited company, in accordance with the provisions of Art. 335–351 of the Act on Companies. A firm is obliged, however, to make up a simplified balance sheet on the basis of the Accountancy Act and to have the transformation registered and published officially before transformation.

The original version of the Act on the Establishment of Individuals as Self-employed Persons rendered only for Hungarian citizens to be established as self-employed persons in Hungary. Through Art. 3 of Act LXXII of 1998 this provision of the Act on the Establishment of Individuals as Self-employed Persons was amended and natural persons qualified as foreigners<sup>2</sup> can now also be established as self-employed persons in Hungary. Therefore, from 1 February 1999 it became possible for foreigners to be established in Hungary as self-employed persons. This was enabled by Act LXXII of 1998 on the Establishment of Foreigners as Self-employed Persons (hereinafter „Act LXXII”). With Act LXXII Hungary ensures national treatment for citizens of the EU in accordance with the obligation set forth in the European Agreement. However in accordance with the European Agreement and its appendices, Act LXXII does not provide for the requirement of „national treatment” in the case of real estate trade, agent's activity, agricultural work, lawyer's practice and certain transportation services. The European Agreement obligates all signatory countries to ensure free settlement and national treatment as regards the other contracting countries. As a result of this after Act LXXII came into force EU member countries also became obliged to make it possible for Hungarians to be established as self-employed persons under the same conditions they lay down for their own citizens. Furthermore, Act LXXII makes it possible to ensure national treatment also for a citizen of the country not party to the European

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<sup>2</sup> According to the subjective effect of Act LXXII, it is important to define who is qualified as a foreigner in Hungary. Regarding this question the definition laid down in the Act on Foreign Exchange is decisive. With regard to the referred definition every natural person shall be qualified as foreigner who has no identification card issued by the proper Hungarian authority, and for whom this is not even made compulsory by legal provisions. – Where a foreign self-employed person operates in the form of a firm, he/she is required to register his/her business into the trade register and may choose a trade name. As to Act LXXII, foreign citizens as self-employed persons shall be qualified still as foreigners from the point of view of real estate acquisition. This means that they are not exempted from restrictive Hungarian provisions prescribed for all not domestic citizens. Act LXXII does not enable at present foreign self-employed persons to set up a branch establishment in Hungary. Act LXXII extends to foreign self-employed persons the guarantee rules referring to the protection of foreign investments in Hungary and the settlement of foreigners in Hungary with economic purposes.

Agreement if that country concludes an international agreement with Hungary referring to this.

The first section of Act LXXII enables foreigners to be established as a self-employed person, or to operate in the form of a firm, or to perform so-called self-employment. All kinds of economic activity that may be performed independently and which are not subject to the Act on the Establishment of Individuals as Self-employed Persons shall be qualified as self-employment. A so-called self-employed person is obliged among others to provide for the cover of health and old-age insurance services. The foreigner as a self-employed person in Hungary must also meet the relevant professional requirements as well as fulfil other relevant statutory provisions.<sup>3</sup>

## *2. Legal basis of social insurance*

The rules on the payment of social insurance contribution as well as the existence of the legal relationship of social insurance, valid as of January 1, 1998, are laid down in Act LXXX of 1997, regulating which people are entitled to the provisions of social insurance and to a private pension as well as on the funds necessary for the provision of these services.

### *2.1. Social insurance legal relationship*

The social insurance legal relationship arises at the same time with legal relation (basic legal relationship) referring to work. The social insurance is in force from the beginning of the legal relation it is based on until its termination if it is not provided by the Social Insurance Law. The basic legal relationship could be employment-like (such as employment relationship, civil servant relationship, etc) and self-employment based as well.

### *2.2. Insurance of Persons Being in More Legal Relations at the Same Time*

It often occurs that a person performs work for more employers or for the same employer but in different legal relations at the same time or he/she is employee and self-employed in the same time, or self-employed and member of undertakings simultaneously. Accordingly he/she establishes more insurance relations at the same time. In terms of the Social Insurance Law the entitlement of insurance of these persons shall be judged in each legal relation separately. With reference to each insurance relation the liability of employers and included the – self-employed – insured persons to pay contribution shall be defined separately and liabilities to deduct, pay and register are to be fulfilled by legal relations separately.

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<sup>3</sup> This includes among others qualification requirements, the obligation to take out licences and a working knowledge of the Hungarian language as regards the profession being the subject of the business. – <http://www.bankestozsde.hu/ex9907/legal.html>

### 2.3. Suspension of Insurance

Suspension of insurance is an institution interrupting the continuity of insurance during which no insurance period can be considered for the insuree. The cases of suspensions are as follow:

- a) The insurance is suspended during the period of *unpaid leave or uncertified absence except*: *aa*) that leave is permitted for the insuree for taking care of a child younger than 3 years being permanently sick or raising and taking care of a child up to the age of 14 at home; *ab*) during the period of unpaid leave he/she receives salary, other remuneration from the employer or sickness benefit from social insurance; *ac*) during the period of military (civilian) service.
- b) The insurance is suspended *during the period of pre-trial detention or imprisonment* except that the insuree is acquitted on the charge sententially or the criminal procedure is stayed.
- c) The insurance period of a *lawyer or patent attorney* is suspended for the period during which he suspended his/her membership of the Bar Association or of the Patent Attorney Society.

In case of *self-employed entrepreneur* there is *no possibility* to suspend insurance according to current provisions of law.

### 3. Personal scope of social insurance

According to Act LXXX of 1997 on Social Insurance there are three groups of beneficiaries of social insurance benefits: a) insurees, b) the relatives of insuree and c) beneficiaries of certain benefits of social insurance.

#### 3.1. The insurees

In terms of the social insurance rules the persons belong to the circle of insurees who are entitled to receive all benefits of social insurance.

As provided by the Social Insurance Law, Article 5 the following persons are considered insurees:

- person being employed, in private employer, in public employment, public service relationship, judicial, prosecution and other servicing relationship;
- member of a cooperative participating in its activity within the framework of a labour of venture-like relationship personally;
- student studying in a vocational school and doing practical work on the basis of an educational contract;
- person receiving earnings supplement, unemployment compensation, unemployment compensation before retirement;
- self-employed entrepreneur or the one working in an associated undertaking in case he/she performs no *complementary activity*;

- person performing work individually against remuneration within the framework of other relationship referring to work, in case of existence of defined conditions;
- church dignitary / or prelate and members of religious order.

*a) Insurance of Persons being Employed*

The person being employed is who performs work governed by the Labour Code. The labour relationship is established by conclusion of a labour contract between the employer and the employee. The insurance liability is in force from the beginning of the employment until its termination except when the insurance is suspended. The insurance of the person being employed is in force irrespective of the number of daily working hours thus in case the person is employed in one hour daily (part-time work) he/she is still qualified as insuree. The insurance or liability to pay contribution are not concerned if it turns out subsequently that the labour contract was invalid.

Public employees are the persons who are employed by state budgetary institutions and those of local municipality. Their legal status is governed by the Law XXXIII of 1992.

Rules referring to public service relationship are regulated by the Law XXIII of 1992 referring to legal status of civil servants which is mainly established by appointments for undefined period.

*b) Insurance of Members of Cooperatives*

Legal status of cooperatives is provided by the Law I of 1992. In terms of it personal participation in work of the member of a cooperative is not obligatory. The member can perform work within the cooperative in two ways: by establishment of labour relationship or within the framework of a venture-like legal relation. Their insurance liability shall be judged by the rules being authoritative for the legal relation work is based on.

*c) Insurance of Students of Vocational Schools*

Vocational training is provided by the Law no. LXXVI of 1993. The professional, theoretical training of students is carried out in vocational schools which can be a vocational secondary school, a specialized school or an industrial/trade school. The economic organization can perform practical training on the basis of an agreement concluded with the vocational school in case of fulfilment of conditions prescribed. Upon this agreement a written educational contract can be concluded between the student and the employer for the purpose of practical training. For this period the organization providing practical training is obliged to pay a pecuniary contribution of at least 10 % of the current minimum wages for the student. On the basis of the educational contract the person accomplishing the age of 16 studying in a vocational school is qualified as insuree.

*d) Insurance of Persons Receiving Unemployment Compensation*

In terms of law referring to promotion of employment and compensation of the unemployed persons receiving earnings supplement, unemployment compensation, unemployment compensation before retirement are qualified as insuree during the period of allocation of compensations.

*e) Insurance of Entrepreneurs Performing Complementary Activity Self-employed Entrepreneurs*

We have already discussed this group earlier.

*f) Insurance of Members of Associated Undertakings*

With a view to the application of social-security provisions of law, associated undertakings are the followings: unlimited partnership, limited partnership, limited liability company, public utility company, patent attorney company, driving instructors' partnership, lawyer's office, joint venture, association and preliminary company.

Associated entrepreneurs (társas vállalkozó) are in terms of the Social Insurance Law Article 4, item d):

Full partners and associate members of a limited partnership, members of an unlimited partnership, limited liability company, public utility company, joint venture and association – even if these are operated as preliminary companies – in case they participate in their activity actually and personally and this participation is not performed within the framework of labour relationship or on commission. This is called membership.

Members of a patent attorney company if they participate in the activity of the company personally. Their insurance is in force from the starting date of the actual participation liability until the date of its termination.

Accordingly, the insurance liability cannot be based on the existence of membership alone in the previous cases. The actual participation of the member is also necessary for it. Its starting date is the date defined by the deed of association.

In case the members of an associated company are employed, insurance liability is defined by the rules prescribed for labour or commission relationship.

*g) Insurance of Persons Working Individually for Remuneration Other than Labour Relation*

In terms of the Social Insurance Law Article 5, article (1), item g) these persons are home-workers, persons performing work individually or their assisting family members in commission or venture-like legal relation or under utilization contract.

Rules of employment of home-workers (bedolgozó) are provided by the Government Decree no. 24/1994 (25.02). With reference to commission and venture legal relation rules provided by the Civil Code shall be applied. Persons performing work individually under the terms of a utilization contract are authors of works protected by the law referring to author's rights, performers of literary, scientific-educational performances and artists.

Insurance of assisting family members (*segítő családtag*) is in force in case of self-employed entrepreneurs, limited partnership and unlimited partnership exclusively. An assisting family member can only be the close relative of a natural person in terms of the Civil Code performing work in the activity of undertaking or partnership personally, for remuneration, not being employed and not receiving pension benefits by his/her own right. In case the assisting family member performs work on the basis of a labour contract, rules referring to labour relationship shall be applied.

Elected officials shall also be considered persons performing work within the framework of other labour relation as provided by Article 5, article (2). Elected officials are, among others, elected representatives and officials of funds, social organizations, unions, public corporations, public utility companies, chambers, economic organizations, local municipalities, etc. By judgement of their insurance liabilities calendar dates elapsed from the date of election until the date of payment of contribution or termination of office shall be taken into consideration.

Persons performing work against remuneration (other than employment relationship) can be considered insuree if their income deriving from this activity or honorarium or their remuneration reaches the lower limit of insurance. Their insurance liabilities shall be judged monthly or from the beginning of the legal relation serving as a basis until its termination or upon payment of contribution subsequently. Incomes serving as the basis of the monthly contribution achieved with the same employer shall be summarized. The insurance limit is achieved by a person performing work in other labour relation when his income – deriving from this activity – serving as the basis of monthly contribution reaches 30 % of the minimum wages being in force on the first day of month preceding the subject month or in case of fractional monthly employment the 30 part of it divided into calendar days. The minimum wage is 50 000 HUF per month in 2002.<sup>4</sup>

In case remuneration or honorarium are not paid by month regularly but periodically or upon completion of the activity, insurance liability shall be judged subsequently. The amount of contribution paid – including advance as well – serving as the base of the personal income tax shall be divided by the number of calendar days of the period for which the contribution or honorarium was paid.

## *2.2. Beneficiaries of Certain Benefits of Social Insurance*

In contrast with insurees persons belonging to this group are entitled to certain benefits of social insurance.

### *a) Beneficiaries of Accident Benefit*

Such persons are among others self-employed entrepreneurs performing complementary activity, members of associated undertakings performing activities qualified as complementary, persons performing public utility or public interest work.

Complementary activity is performed by the self-employed and associated entrepreneurs if they perform their venture activity as pensioners with own entitlement

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<sup>4</sup> For example, if the person's monthly income is 20,000 HUF he/she will be insured, because that amount is over the 30% of the minimum wage (15,000 HUF), but in case his/her income is 10,000 HUF per month, according to the recent Hungarian law he /she will not be insured.



or accomplished the age of retirement referred to them and receive widow's pension. They receive accident benefit in case of their inability to work due to works accident in connection with their activity or becoming impaired only. The self-employed entrepreneur performing complementary activity shall pay work accident contribution upon venture withdrawal or in case of lump-sum taxation upon the income being the base of lump-sum tax. The economic association is obliged to pay accident contribution upon the associated entrepreneur performing complementary activity on the basis of the income paid for personal participation being the accounted base of contribution. The measure of work accident contribution is 5 %. No contribution shall be paid if no venture withdrawal or payment for personal participation were effected for the entrepreneur.

However, upon persons performing public interest or public utility work no work accident contribution shall be paid.

*b) Beneficiaries of health care benefits (in kind)*

Persons who are not qualified as insurees obtained, however, entitlement for any social-security benefit or are qualified dependant relatives of an insuree or person receiving benefit or they receive any kind of social contribution are entitled to health service. Person(s) entitled (only) to health care services are as follow:

- ba)* sick pay, maternity or confinement allowance, child care fee, accident-related sick pay, accident-related annuity;
- bb)* direct entitlement old age and disability pension or survivor's pension;
- bc)* old age, work disability and widow's annuity for agricultural workers, increased old age, work disability and widow's annuity for agricultural workers, temporary annuity, regular welfare annuity, annuity of victims of health damage;
- bd)* national home nursing care benefits (supplement), war widows/orphans benefits, miner's income subsidy;
- be)* child care allowance;
- bf)* pension from a church or religious community registered in Hungary, or
- bg)* regular social allowance, welfare old age annuity, home nursing care benefits, child care support, income subsidy for the unemployed;

and are Hungarian citizens who are

- bh)* pursuing full-time studies in a secondary or at a higher educational institution; and foreign citizen who pursue his/her studies under international (bilateral) agreement or whose study was subsidised (given a grant) by the Hungarian Ministry of Education;
- bi)* performing military (civilian) service;
- bj)* the dependent of the insured person and whose monthly income does not exceed 30% of the minimum wage in force on the first day of the year under consideration
- bk)* a minor (under 18 years of age) who is residing within the territory of the Republic of Hungary;

- bl)* a young adult between the ages of 18 and 24 but still receiving benefits within the child welfare system, and a person (except foreigners) placed in a residential institution providing personal care, detained as a prisoner;
- bm)* homeless persons whose need has been acknowledged by the local government and who are holders of a card entitling the owner to health care services;
- bn)* entered into agreement on obtaining eligibility for health care services, and his/her dependants, obliged to pay 11% the health care contributions, or dependants of the above.

### *2.3. Persons excluded from the personal scope*

#### *a) Excluded foreigners*

In terms of the Social Insurance Law, Article 11 the insurance doesn't cover foreign citizens, namely:

- aa)* diplomatic representatives of foreign states, members of foreign nationality of diplomatic corps'
- ab)* personnel, representatives of foreign nationality of an international organ receiving diplomatic exemption and spouses and children of foreign nationality living together with persons listed residing in Hungary.
- ac)* persons qualified as foreigners employed by foreign employers in Hungary,
- ad)* employees or members being natural persons qualified as foreigners employed by economic associations operating with foreign participation, Hungarian branch of companies with foreign residence and commercial agency, branch of bank and agency of insurance company of an undertaking with foreign residence within the territory of the Hungarian Republic which is not provided by any international agreement.

*Possible solution:* The Social Insurance Law shall be applied for persons coming under the provisions of international (bilateral) social policy or social security agreements according to rules of agreements. Social policy agreements are in force at present with member states of the Commonwealth of Independent States, with succession states of former Yugoslavia, Romania, Bulgaria, Poland, Czech Republic and Slovakia. Social security agreements are in force at present with Austria, Germany and Switzerland. It is to be mentioned that the same rules refer to foreign citizens having labour permit employed by Hungarian employers as to Hungarian citizens.

#### *b) Excluded or partly excluded Hungarians*

Persons (Hungarian) not fully insured are

- ba)* members not participating in the activity of economic associations,
- bb)* students of vocational schools not having educational contract with economic organizations, farmers,
- bc)* officials performing work in other labour relation or being elected if their remuneration of one month doesn't reach 30 % of the minimum wages, that is the insurance limit.

*Solution for excluded Hungarians* (agreement on social-security benefit): On the basis of a special contract or so-called agreement period of service by payment of benefit and entitlement for health insurance benefits can be obtained.

### *3. Territorial scope of social security scope*

The Hungarian social insurance system is valid only within the territory of the Hungarian Republic. There are some bilateral social policy agreement (i.e. Poland, Czech Republic, Romania, etc) and social security agreement (i.e. Germany, Switzerland, Austria). According to those bilateral agreements the territorial scope of the Hungarian social insurance (security) scheme can be extended on a mutual basis. But this is an exceptional situation.

## *4. Financing Rules of Social-Security Contribution Payment*

### *4.1. Main rules*

For coverage of social-security benefits employers<sup>5</sup> and insurees shall pay contributions. The employer pays social-security contribution consisting of a health insurance contribution of 11 % and a pension insurance contribution of 18 % and also contributes to sick-pay expenditures in 2002. There is no upper limit defined payment of social-security contribution. The insuree shall pay a pension insurance contribution of 8 % and a health insurance contribution of 3 %. The member of a private pension fund is obliged to pay a state pension insurance contribution of 2 % and a health insurance contribution of 3 % and a membership fee of at least 6 % to the private pension fund chosen by him/her. The membership fee can be completed by the employer or the insuree until 10 % of the base of membership fee.

*Upper limit of contribution payment.* In case of pension contribution it is the amount of the double of gross average earnings for one calendar day planned for the subject year defined by the Budget Law. This amount is daily 6,490.- Ft and 365 x 6,490.- Ft for the whole year i. e. 2,368,850.- Ft in 2002. There is no contribution ceiling in health care contribution.

There is a special rule for retired self-employed person. Accident contribution is paid upon the self-employed entrepreneur qualified as performing complementary activity or members of the associated undertaking performing complementary activity, the measure of which is 5 %. However, employers shall not pay health insurance and pension contribution in case of employment of pensioners by own right.

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<sup>5</sup> According to the Social Insurance Act employers are: a) any legal entity and natural person, economic association not having legal entity, other organizations, budgetary institutions, any personal association if insurees are employed by them; b) economic organization and self-employed entrepreneur concluding educational contract with students studying in vocational schools; c) associated undertaking in case of employment of associated entrepreneur.

#### *4.2. Payment of Social-security Contribution of Associated Undertakings*

The associated undertaking pays a social-security contribution upon its member qualified as insuree for his/her personal participation upon his/her accounted and paid income forming the base of contribution.

In case no income is paid for personal participation within the given month the contribution is to be paid upon the current minimum wage at the first date of month preceding the subject month. Accordingly, the associated undertaking shall fulfil the obligation to pay the minimum contributions upon its members even if they participate in the activity of undertaking during the whole year personally and no payment is effected for it. Contributions shall also be paid upon the income distributed after termination of insurance.

#### *4.3. Contribution Payment of Self-employed Entrepreneurs*

The self-employed entrepreneur is obliged to pay social-security contribution and individual contribution having a minimum and a maximum base. The contribution base is the amount accounted as expenditure by right of personal work within the framework of this activity i.e. the venture withdrawal and in case of lump-sum taxpayer it is the income forming the tax base. He/she shall pay the minimum contribution upon the minimum wage valid at the first date of month preceding the subject month even if no personal withdrawal was effected. If the amount of personal withdrawal exceeds the upper limit of contribution payment, contributions shall only be paid to the extent of its annual or proportional amount.

The self-employed entrepreneur is not obliged to pay either social-security or individual contribution upon consideration of the minimum wage for the period during which *a)* receives sick-pay, accident sick-pay, maternity benefit, child-care allowance, child benefit and nursing allowance except that he/she performs his/her venture activity during the last free allocation of allowance personally, *b)* does military service, *c)* is imprisoned and *d)* (an individual lawyer or patent attorney) suspended his/her membership of the Law Society.

If the self-employed entrepreneur is simultaneously employed for a working time of at least 36 hours weekly or he/she is regular student of an institution of secondary or higher education, the actually achieved income forming the base of contribution is considered the base of payment of social-security and pension security contributions.

The self-employed who is also insured as associated entrepreneur shall fulfil his/her obligation to pay contribution upon the amount of personal withdrawal but at least upon the prescribed minimum contribution base. In case of associated undertakings the actually paid income forming the base of contribution shall be considered the contribution base. The self-employed entrepreneur is obliged to pay contribution from the beginning of the insurance liability, that is the date of receipt of his/her venture certificate, up to the date of its return or termination.

#### *4.4. Financing other social security systems*

The family support scheme is a tax-financed (its source is the Central budget) system. To the unemployment scheme the employer pays 3% contribution and employee pays

1,5% contribution. However, self-employed persons are excluded from its personal scope. The social assistance scheme is also a tax-financed system. The social assistance benefits are covered by the Central and the local (government) budget.

### 5. Administration of social security

There are five main branches of social security administration in Hungary. These are pension and health insurance (including statutory employment injuries and occupational diseases system) and the rest are the unemployment insurance, the family support system and the social assistance system. As far as the administrative organisation of social security is concerned, only the pension and health branches are officially recognised as social insurance, even though the passive-type unemployment benefits are operated according to social insurance principles.

The Hungarian pension system underwent a comprehensive reform in 1997. This represents a major improvement on the previous systems and should protect pensioners while greatly improving fiscal accounts. It has one mandatory pillar plus two supplementary pillars.

The mandatory pillar is the state pension, which is publicly managed and financed on a PAYG basis from the Pension Insurance Fund. This system is managed by the National Pension Insurance Administration (*Országos Nyugdíjbiztosítási Főigazgatóság*) and its county (capital) branches [*megyei (fővárosi) nyugdíjbiztosítási igazgatóságok*]. There is a special body affiliated to the National Pension Insurance Administration called the Pension Reimbursement Directorate (*Nyugdíjfolyósító Igazgatóság*). The Pension Reimbursement Directorate is responsible for the payment of pensions and in special cases will also calculate the sum of the pension. In addition, it distributes benefits other than those falling under social insurance.

The second pillar consists of privately run pension funds and is funded on a capitation basis. This pillar is administered by several independent and authorised private pension funds, which are supervised by the state. Employers, chambers of professionals, unions of employees and employers, voluntary pension funds and the local municipalities (of Budapest and the counties) may set up such pension funds. These funds are non-profit organisations owned by their members and operated according to the relevant regulations and their own bylaws. Insured persons are free in their choice of pension fund. If they are later unhappy with their choice it is possible to transfer to another fund.

The administration of mandatory health insurance is fulfilled by the National Health Insurance Fund Administration (*Országos Egészségbiztosítási Pénztár*, hereinafter the NHIFA), by the county (capital) health insurance bodies (*fővárosi és megyei egészségbiztosítási pénztár*) and by the workplace-based social insurance pay-offices (*munkahelyi kifizetőhely*). Several special bodies are affiliated to the NHIFA such as the Railwaymen's Social Insurance Directorate (*Vasutas Társadalombiztosítási Igazgatóság*) and the National Institute of Medical Experts (*Országos Orvosszakértői Intézet*). The latter body is responsible for assessing the level of disability for accident benefits. The statutory health insurance system is also responsible for the payment of cash benefits, such as sickness benefit (*táppénz*), maternity benefit (*terhességi-gyermekágyi segély*) and child care fee (*gyermekgondozási díj*).

The National Tax Authority (Állami Adóhatóság), its capital and county branches are responsible for collecting, recording and supervising the payment of social insurance contributions. Every insured person and his/her employer must declare and pay regularly the health and pension contributions to the Tax Authority. The tax offices exercise official power against contributions payers who are reluctant or deny their obligation to pay social insurance contributions. The Tax Authority transfers the collected contributions to the Health Insurance Fund and to the Pension Insurance Fund.

We shall not mention here the administration of unemployment system, because the self-employed persons are completely excluded from the unemployment benefit scheme.

The benefits under the family support scheme are universal type system and financed by the state central budget, but administered by the Territorial Public Finance Offices (Területi Államháztartási Hivatal) and subordinate bodies in workplaces. This body must be set up if the number of employees is over 100 (családtámogatási kifizetőhely).

The benefits under the social assistance scheme are means-tested, financed by the state central budget and by the local government's budget, but administered only by the local governments (*helyi önkormányzatok*).

The overall responsibility for social security policy lies with the Ministry of Family and Social Affairs, the Ministry of Health, Ministry of Economic Affairs and the Ministry of Finance.

As regards supervision, the minister of the Ministry of Finance is responsible for the branch of pension insurance. The Ministry of Health is responsible for the health insurance and for health care. The Ministry of Social and Family Affairs is responsible for the family support and partly for the social assistance system. The Ministry of Economic Affairs is responsible for the unemployment insurance scheme. As regards the financial supervision, the National Audit Office (*Állami Számvevőszék*) is responsible for the supervision of the financial activities of the above-mentioned social security schemes. The Minister of Finance supervises the operation of the private pension funds. It does this through the Supervision for Financial Organisations (Pénzügyi Szervezetek Állami Felügyelete). It is within the authority of the Supervision for Financial Organisations to issue a licence for the operation of a pension fund, to check on their operation and to take certain control measures. Furthermore, it operates a central registry of pension funds, defines minimum levels of return on the investments and has the right to commission a receiver to revive an ailing pension fund. Pension funds are obliged to submit quarterly and annual reports, and every second year the Supervision for Financial Organisations is expected to subject each pension fund to an inquiry.

## *6. The benefits within the framework of the social security system*

Benefits allocated within the social insurance system can be received within the framework of pension and health insurance.

### *6.1. Old age pension*

The Hungarian old age pension systems has recently undergone considerable reform. As from early 1998, the Hungarian old age pension system consists of three components:

- a) a conventional, pay as you go social insurance pension from the Pension Insurance Fund, (hereinafter the „first pillar”)
- b) a private pension provided by private pension funds, (hereinafter the „second pillar”)
- c) a pension service provided by voluntary pension funds (hereinafter the „third pillar”).

Under the new system the first and second pillars were mandatory for all new entrants into the labour force as of 1 July 1998. The new entrants are not obliged to enter the 2<sup>nd</sup> pillar from January 1, 2002. Workers who had already acquired pension rights under the old system and those who entered the labour market before July 1998, had the option of either staying in the (reformed) first pillar, or switching to the new system consisting of the first and second pillars. The new system began operating on 1 January 1998. Workers were given two years to exercise their right to switch to the new system (until August 1999). Those who initially opt for the new system will be free to return to the first pillar until December 2002. After that date, workers will be permanently affiliated either with just the first pillar or with the new, mixed system of the first and second pillars. Those who chose to remain within the first pillar will still receive a full pension from the PAYG fund. Those who join the new system will receive a pension from the first pillar equal to three-quarters of that given to those who decided to stay with the first pillar. Their first pillar pension is then supplemented by their second pillar pension.

The first pillar of old age pension forms the backbone of the social insurance pension system. In this system the retirement age is gradually being increased from 60 (men) or 55 (women) to 62 years for both sexes. This gradual process will be completed by 2009. Until 2009 one has to accumulate 20 years of service record (periods of insurance) to be entitled to a full pension and 15 years to a partial one.

The amount of the pension is calculated according to the claimant's service record and his/her average monthly gross earnings upon which contributions have been paid. The calculation of average earnings takes into account all earnings received between 1 January 1988 and the day of retirement. Earnings made before the third year preceding retirement have to be adjusted upwards to the level of the second year preceding retirement, and that average has to be taken into account thereafter. Until 2009 the full pension may not be less than the minimum pension (20,100 HUF in 2002), which is set annually. It is a sum that is close to half the average pension. For a service record of 20 years the pensioner will receive 53% of his/her average monthly earnings (up to the contribution ceiling). S/he will receive an extra 2% for each year of service between 21 and 25 years of service record, 1% for each year of service between 26 and 36, 1.5% for each year of service between 36 and 40, and 1.5% for each year s/he works after 40 years of service.

The formerly mandatory private pension component was introduced as an integral part of the statutory social insurance type pension scheme, as the second pillar of a multi-pillar pension. This obligation for a new entrant to labour market was abolished in January 1, 2002. When an insured person pays his/her pension contributions part of these are kept in the first pillar PAYG fund and another part is transferred to a private pension fund. Should disablement occur, an insured person might return to the social insurance pension scheme because the private pension scheme is not prepared to handle the risks of disablement. When a person returns to the social insurance pension system, there are two options: the sum on his/her personal account is either transferred to the

Pension Insurance Fund or it is not. If it is, then his/her case is treated as if s/he were an ordinary contributor. Consequently, his/her pension is calculated according to the general rule. If that sum (membership fee plus interest) is not transferred, then the person is entitled to a reduced social insurance pension.

The second pillar pension is derived from the sum that has accumulated from the insured person's contributions plus the interest borne therefrom. Since 2002 there is no minimum guaranteed private pension annuity paid under the second pillar. The Guarantee Fund of private insurance scheme guarantees only the sum which has been accumulated from the insured person's contributions plus the interest of this amount.

The second pillar pension fund provides annuities (pension) and/or lump sum payments for its members.

*The annuities available are as follows:*

- an annuity paid until the end of the member's life,
- an annuity that is disbursed to a pension fund member until a certain set period and thereafter until the end of his/her life, or
- an annuity that is disbursed to a pension fund member until the end of his/her life and thereafter to his/her for a certain period, or
- a joint-life annuity, beginning on a specified date; paid until both husband and wife have died.

*Lump sum payments may be made in the following cases:*

- if a pension fund member dies before reaching the retirement age (62); (in such case the designated surviving relatives are entitled to receive the lump sum payment)
- if a member failed to acquire 180 months of membership in one or more pension funds.

Since December 1993 Hungarian law has allowed the establishment of voluntary pension funds of the third pillar. They enable the pension fund members to complement their pension with voluntary savings. Their employers usually contribute to these saving (even though they are under no direct obligation to do so) and the pension fund members are entitled to tax reimbursement on their contributions.

## *6.2. Survivors' pensions*

Survivor's pensions will only be paid when the deceased person giving entitlement was either actually in receipt of a retirement or invalidity pension at the time of his/her death or had accumulated a sufficient service record to claim one of these pensions.

A temporary widow's or widower's pension may be paid to the surviving spouse or partner. The benefit is paid to unmarried partners provided that they have a child and have co-habited for at least one year or have no children but have lived together for at least ten years. Divorced and separated spouses are also entitled provided that they received alimony from their ex-spouse, the amount of their benefit can never exceed the amount of alimony to which they were legally entitled. Temporary widow(er's) pension is usually paid for one year. However, its duration is extended to 18 months if the survivor cares for a child of the deceased or up until the child's third birthday if that child is disabled. The temporary widow(er)'s pension is 50% of the pension that was (or should have been) due to the deceased spouse. If the widow(er) is entitled to his/her own



pension, their permanent survivor's pension equals 20% of the deceased's pension. The temporary widow(er)'s (or widower's) pension may thus be combined with the pension of the widow(er).

Following the expiry of the temporary widow(er)'s pension, the surviving spouse is entitled to a permanent pension if s/he has reached retirement age, is disabled or takes care of at least two orphaned children of the deceased. The pension that is paid to widow(er)s who do not receive an old age or invalidity pension in their own right is set at 50% of the pension that was actually (or should have been) paid to the deceased. If the widow(er) is entitled to his/her own pension their permanent survivor's pension equals 20% of the deceased's pension. The permanent widow(er)'s (or widower's) pension may thus be combined with the pension of the widow(er).

Orphan's allowance may be drawn until a child reaches 16 (or 25 for full time students) if the child becomes disabled whilst receiving the pension, it is paid indefinitely. The sum of the orphan's allowance is 30% of the pension of the person who obtained entitlement. If both parents have died, or the remaining parent is disabled, this is increased to 60% of that pension. If both of the orphan's parents gave entitlement to a pension, then the higher of the two is used for calculating the benefit. The orphan's allowance never falls below a certain minimum, which is fixed annually.

The parents' (grandparents') pension is also part of the survivors' benefits system and is paid if the deceased's parents or grandparents were either disabled before his death or aged 65 years or over and primarily supported by the deceased for at least a year before his/her death.

If the deceased died as a result of an employment injury or occupational disease, entitlement to benefits exists even if the insured person did not have a sufficient service record to obtain an old age or invalidity pension. The widow(er) of a victim of an employment injury or occupational disease receives a pension even if she is below retirement age and there are no dependant children.

### *6.3. Incapacity for work*

An insured person is deemed to be temporarily incapacitated for work due to illness, pregnancy or childbirth (if not in receipt of maternity benefit) or nursing a sick child (the nursing of sick children under the age of one year is restricted to mothers and single fathers). For those who are not nursing sick children the employer is obliged to pay 80% of the employee's normal earnings for a period of 15 working days. After this period entitlement to sickness benefits (*táppénz*) under the social health insurance begins. The amount paid by the social insurance scheme depends on the claimant's service record and daily average earnings over the previous twelve months (up to the contribution ceiling). For those who have been insured for less than two years, 60% of the daily average wage is paid. For those with more than two years of service record, 70% of daily average earnings are paid. All those receiving in-patient treatment receive 60% of their previous average earnings regardless of their service record. Victims of employment injuries and occupational diseases are entitled to a periodic benefit equal to 100% of their average earnings for a period of at least one year (with the possibility of an extension to 2 years).

There are strict limits on the amount of time that can be taken off work in order to care for sick children and these depend upon the age of the child. These periods are

increased for single mothers. For children less than one year old there is no limit, for children aged between 1 and 3 years a maximum of 84 days is provided, for those aged between 3 and 6 this is 42 days (84 for single parents) and for those aged 6 to 12 this is 14 days (28 for single parents). The amounts paid during these periods (*táppénz*) are the same as those paid to insured persons missing work due to sickness.

A person is classified as permanently incapable of work if s/he has lost at least two-thirds of his/her working capacity, has no regular employment or is only capable of earning a significantly lower wage and no improvement is expected for at least one year. Entitlement to an invalidity pension then depends upon the incapacitated person satisfying the necessary service record (period of insurance). The required service record varies according to the age of the person concerned. Those who began work before 22 years of age must have completed at least two years of service before their incapacity, this amount gradually increases until those aged 55 years and over have to demonstrate 20 years of service.

The size of the invalidity pension depends on the following factors: the average earnings, the measure of disablement, service record (period of insurance) and age. The average earnings that are used for this purpose are usually the same as those applied for retirement pensions. The measure of disability relates to three categories:

- Class III: persons who are disabled but retain a limited measure of working capacity,
- Class II: persons who have lost all their working capacity but do not need to be taken care of by others.
- Class I: persons who have lost all their working capacity and need to be taken care of by others.

Those in Class II receive 5% more than those in Class III and those in Class I receive 10% more than those in Class III.

If a person suffers from a work-related injury or occupational disease (disablement by injury), there is no minimum service requirement, although the level of the pension still depends on the length of service. The categories of accident-related invalidity pensions coincide with those for invalidity pensions. As a rule, pensions payable in cases of accident-related disability are higher than those paid in case of disability.

#### 6.4. Family

The maternity-confinement benefit (*terhességi-gyermekágyi segély*) is an income-substituting allowance paid during the period of maternity leave (24 weeks) to insured women who have lost their working capacity because of pregnancy and childbirth. Entitlement depends upon the completion of 180 days of insurance over the two years preceding maternity leave. The benefit is paid under the system of social health insurance provisions. It is due for the period of maternity leave and amounts to 70% of the daily average earnings.

The child care fee (*GYED*). The child care fee was reintroduced in 1<sup>st</sup> January, 2000. The objective of the child care fee is to make up for the lost income for insured parents who are employed and should expect a significant drop in income because of child birth. The allowance may be established for parents raising their children below two years of age. Those insured parents are eligible who have been insured for 180 days prior to the application for the child care allowance, or in the case of mothers giving birth to a child

before the birth, in addition, mothers receiving maternity-confinement benefit, whose insurance is terminated during the term of the maternity-confinement benefit providing that her entitlement to the pregnancy-young mothers benefit was established during the existence of the insurance and who have been insured for 180 days within the last two years prior to the birth and, raise the child in their own household. It can be paid until the child reaches his/her second birthday. Following that time, child home care allowance (GYES)<sup>6</sup> can be applied for until the third year of age of the child, or until 10 years of age in the case of durably ill or severely handicapped children.

The amount of the fee is 70 % of the daily average wages but it cannot be higher than HUF 83,000 per month.<sup>7</sup>

The Family Support Act (Act LXXXIV of 1998) introduced the education benefit. The education benefit consists of family allowance (*családi pótlék*) and education support (*iskoláztatási támogatás*) schemes. Basically, family allowance is paid until the child reaches school age and then education support is paid. These two systems replaced the former unified family allowance scheme: Neither benefit depends upon a means test or minimum service record as they form part of a universal system.

Family allowance is only paid while the child is below school age (below 6 years) and is available for parents, foster parents, step-parents, guardians and the managers of foster homes or correctional facilities if the child is a permanent resident therein.

Entitlement to education support (during compulsory primary and secondary education up to the age of 20) is available for parents, step-parents, foster-parents and guardians. It is also paid to adult orphans (up to the age of 20) if they have lost both parents and an adult (up to the age of 20) who has been released from foster care.

The amount of family allowance and educational support depends upon the number of children in the family. Increased amounts are paid to single parents, disabled children and foster children.

Other benefits paid under the family support scheme (contained within Act LXXXIV of 1998 on Family Support) are as follows: birth grant (*anyasági támogatás*), child home care allowance (*gyermekgondozási segély*) and child raising support (*gyermeknevelési támogatás*). The birth grant is a lump sum payment of 150% of the minimum old age pension per child, paid to all mothers who regularly attended prenatal care sessions. Child home care allowance is a periodic benefit provided for parents who remain at home to care for children under the age of 3 (under 10 for disabled children). Child raising support is a regular cash benefit given to a mother or father who raises three or more minor children in his/her own house, if the youngest child is at least three years old but has not yet reached the age of eight years.

#### 6.5. Health care benefits

According to the Hungarian health insurance law, two types of health care benefits can be distinguished. One is the benefits in kind [health services] (*egészségügyi szolgáltatások*), and the other is cash benefits (*pénzbeni szolgáltatások*), such as maternity-confinement benefit (*terhességi-gyermekágyi segély*) sickness benefit (*táppénz*) and child care fee [*gyermekgondozási díj (GYED)*]. In keeping with the

<sup>6</sup> The child home allowance (GYES) is universal type benefit and it regulated by the Family Support Act.

<sup>7</sup> This is a social insurance-type benefit.

structure of this book the sickness benefits have already been explained in the section on „Incapacity for work” above and the maternity-confinement benefit and child care fee shall be described above under „Family”.

The Law LXXXIII of 1997 on Health Care Insurance (hereinafter: Health Insurance Law) provides the health insurance benefits which are a) medical attendance, b) contributions and c) accident related health care benefits (we do not deal with the accident related health care benefit here).

*A. Medical Attendance Free of Charge:*

- a) medical attendance for prevention and early recognition of illness,
- b) medical attendance for medical treatment including,
  - ba) family doctor attendance,
  - bb) dental treatment,
  - bc) outpatient treatment,
  - bd) medical treatment of in-patients,
- c) rehabilitation,
- d) additional medical attendance
- e) maternity treatment,
- f) medical ambulance service.

*B. Services Provided with Contribution to Price: contribution granted to the price of medicines, medical aids and medical treatments, travel allowances.*

Health care services are provided by either physicians who are employed by the local governments or independent doctors who have their own contract with a county level body of the National Health Insurance Fund Administration.

The basic principle is that medical services can be used to the extent justified by the person's state of health. Health care is generally provided free of charge. This means that the prevention, diagnosis and treatment of diseases by family physicians, dentists and hospitals does not usually incur any co-payments by the patient. Rehabilitation (including occupational therapy), maternity care and ambulance transport are also provided free of charge.

Co-payments are required for certain services such as the provision of dental braces to adults. Hungarian health insurance does cover between 50 and 100% of the cost of medicines contained within an official list. The full cost of medicines will be covered for victims of employment injuries and occupational diseases as well as some low-income elderly or disabled persons. The patient will also incur charges if s/he makes unauthorised use of prescription only treatment, uses the services of a non-contracted health care provider or asks for extra services including a better room in a hospital.

There are some services which are excluded from the ambit of the statutory health insurance. These are services rendered exclusively for aesthetic or recreational purposes and those services which do not improve the patient's state of health and have no proven beneficial effect. The scope of these exclusions is defined in a decree of the Minister of Public Welfare.

According to Act III of 1993 on Social Assistance, a care grant (*ápolási díj*) can be paid to those looking after relatives who require long-term nursing. The care grant is due

to the relative who nurses a severely handicapped person over 2 years of age if that person is unable to take care of him/herself and needs permanent care and supervision. It is also granted to those who care for a chronically ill person under (and in certain cases over) 18 years of age. The amount of care grant may be no less than the prevailing old-age pension minimum. The duration of the payment of care grant is decided by the body of representatives of the local government.

#### *6.6. Unemployment*

Act IV of 1991 (unemployment act) makes a distinction between active and passive means of employment policy. Only passive unemployment benefits (*munkanélküli járadék*) are dealt with here. *However, self-employed persons and their relatives are excluded from the unemployment system.*

Unemployment benefit is due to the person who is involuntarily unemployed and has worked for at least 200 days over the four years preceding unemployment. The person must also be willing to work and co-operate with an employment agency. S/he must have no entitlements to invalidity or old age pension and cannot be in receipt of sickness benefits. Those who have left their job voluntarily or were subject to summary dismissal have to wait 90 days before they can claim unemployment benefits.

Unemployed persons fulfil their obligation to co-operate if they register with the employment agency and maintain regular relations with that agency. They must give serious consideration to the job opportunities offered by the agency; try to seek suitable employment and/or accept any possibilities for training that may be offered by the employment agency.

The amount of unemployment benefit is 65% of the person's previous average earnings. The minimum amount of unemployment benefit is equal to 90% to the minimum amount of old age pension.

The period of entitlement to unemployment benefit depends on the period of employment in the preceding four years. Long-term unemployment is one of the most serious problems of the unemployment system. The unemployment benefit can be paid up to 270 days, then the unemployed person is no longer entitled to further benefit under Act IV of 1991. Therefore, the social assistance system (Act III of 1993) provides the social assistance benefit for long-term unemployed persons. This allowance is paid to ensure the livelihood of unemployed persons who are no longer entitled to any unemployed benefit. This is a means-tested benefit.

#### *6.7. Need*

Citizens who, for some reason, cannot be protected adequately by the, mainly insurance-type, social provisions discussed so far, may receive help from a set of social assistance provisions. These include social assistance and services. The detailed rules of these provisions are contained in Act III of 1993 on Social Assistance (and in some other decrees of implementation). The Act specifies the forms of each social provision provided by the State, determines the structure of the institutional system, the conditions of entitlement to social provisions and the guarantees of the enforcement of rights.

The common characteristic of provisions belonging to this group is that they are designed to grant support to the needy, but only if the persons in question are unable to

furnish sufficient means of existence for themselves from any other resources. When awarding the social assistance the focus is on the family, but the responsibility of individuals and local communities is also emphasised. The main responsibility for the social assistance schemes lies with local governments. In addition to the provisions determined by statute (which are to be granted obligatorily to persons who satisfy the statutory conditions), local bodies can also grant other support at the expense of their own budget. The system is also open in the sense that, besides forms of assistance determined by the State, it provides for the possibility of and actually encourages other (church or entrepreneurial, etc.) organisations to help resolve problems of inadequate subsistence (primarily in the field of personal care).

There is no general scheme providing a guaranteed minimum subsistence level to everyone, instead social assistance is organised along categorical lines with specific provisions for (inter alia) the unemployed, the disabled and the elderly. The following provisions are provided for by the Act on Social Service Welfare Administration and Social Service: social assistance in cash, provisions in kind and personal care (services).

In the course of the transformation of the pension system in 1997, the regulations of social provisions were also modified. Old-age allowance was included in the group of provisions depending on social need. This allowance is granted with the aim of ensuring modest subsistence for old persons who did not obtain entitlement in the framework of the social insurance pension system. This served to offset the strengthening of the insurance character of the pension system: by granting support to those who did not acquire enough years of service during their active years.

### *Conclusion*

In Hungary the rate of self-employed, compared to the EU average, is relatively high. According to the Hungarian social insurance scheme the self-employed persons are insured. Consequently they are entitled to each of the above-discussed social insurance type benefits. The family support scheme is an universal type system, which covers every Hungarian citizen, regardless of his/her employment status. Therefore, every self-employed is covered by family support scheme. The personal scope of the social assistance scheme also covers them. They are excluded only from the unemployment insurance (in cash type) benefits.

As we already mentioned, recently there is no exact and unified definition of self-employment in the Hungarian social security law. Therefore, it can be seen a clear intention by the legislators to set the legal definition of self-employment in the Hungarian law. At the same time, there is a trend within the sphere of social insurance legislation to make equal treatment and eligibility conditions for the self-employed with the other insured persons.

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## Appendix

### Appendix 1

#### *Main legal regulation on social security*

Contributions and services provided within the framework of social insurance, circle of beneficiaries, coverage of contributions, legal relations of social insurance and rights and obligations of subjects participating in them are provided in a number of laws and provisions of law. Main provisions of law to be applied:

– Law LXXX of 1997 and Government Decree no. 195/1997 (05.09) issued for its execution referring to beneficiaries of social-security contributions and of private pension contributions and on coverage of these services (hereinafter called Social Insurance Law).

*This law provides the circle of persons qualified as insuree being the beneficiaries of all social-security contributions at the same time. It also provides the beneficiaries of each contribution, definitions, declaratory statutes, coverage of contributions, social insurance registrations, rules of obligation of data supply and payment of contribution.*

– Law LXXXI of 1997 and Government Decree no. 168/1997 (06.09) issued for its execution on pension contributions of social insurance (hereinafter called Social Pension Contribution Law).

*The law provides the pension contributions due within the framework of social insurance pension system, conditions of entitlement, period of service necessary for assessment, rules of enforcement of claim for pension contribution, responsibility rules in connection with it, order of legal remedy and obligations to supply data and register necessary for pension contributions.*

– Law LXXXII of 1997 referring to private pension contributions and private pension funds.

*This law provides the membership fees, private pension contributions based on individual accounts of citizens and the system of private pension funds uniformly. It also provides which person is obliged to become member of a pension fund and who can be member of it at his own decision. With regard to equal conditions the law refers to the law of social insurance pension contributions several times.*

– Law LXXXIII of 1997 and Government Decree no. 217/1997 (01.12) referring to compulsory health insurance contributions (hereinafter called Health Insurance Law).

*The law provides the types of health insurance contributions in kind and in cash, measures and conditions of entitlement, accident contributions, definition of accident in working, enforcement of claims referring to pecuniary contributions, rules of liability to be applied in this field, legal remedy and obligation to register.*

– Government Decree 181/1996 (6. 12) on early retirement.

*It governs the conditions of pension assessment to be drawn on before accomplishment of the age limit of retirement for the purpose of employment policy.*

– Law XXXIX of 1998 on state supervision of social insurance funds and organ of social insurance and Government Decree no. 131/1998 (23.07) on spheres of activity and authority in connection with the control of their administrative organs.

*In terms of this law supervision of the Health Insurance and Pension Insurance Fund and control of its administrative organs are to be performed by the state.*



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*Management of the Health Insurance Fund, the National Health Insurance Fund and the Pension Insurance Fund is performed by the National Pension Insurance Directorate.*

*It defines the administrative organs of handling organizations of funds and conditions of establishment of social insurance allocating organs operated by the employers and the main rules of their operation.*

– Law XCI of 1990 referring to the order of taxation (hereinafter called Tax Order Law) which governs the order of procedure of contributions and its sanctions.

– Law CXVII of 1995 on personal income tax (hereinafter called Personal Income Tax Law) regulating prescriptions referring to taxable income serving as the base of contribution specifically.

– Act IV of 1991 on Promoting Employment and Providing for the Unemployed

– Act III of 1993 on Social Assistance

– Act LXXXIV of 1998 on Family Support

Appendix 2

Table 1

### Number of employed persons classified by status in employment

(In thousand)

Status in employment	1996	1997	1998	1999	2000
Employee	2 961.2	2 989.7	3 088.5	3 201.3	3 255.5
Member of co-operative	79.0	68.9	55.8	42.5	37.1
Member of partnership	151.8	137.4	132.5	111.8	129.4
Self-employed	372.2	373.3	369.1	407.7	381.0
Contributing family members	40.9	41.0	28.8	28.2	26.1
<b>Total</b>	<b>3 605.1</b>	<b>3 610.3</b>	<b>3 674.7</b>	<b>3 791.5</b>	<b>3 829.1</b>

Source: Statistical Yearbook of Hungary, 2000 p. 86.

HAJDÚ JÓZSEF

## AZ ÖNFOGLALKOZTATÓKRA VONATKOZÓ SZOCIÁLIS BIZTONSÁGI SZABÁLYOK RENDSZERE MAGYARORSZÁGON

(Összefoglalás)

A magyar mikro- és kis- közepes vállalkozások egyik sajátos jellemvonása az önfoglalkoztatás magas aránya. Ezeknek a vállalkozásoknak a jelentős hányada „családi

üzemként” működik, amelyek csupán a vállalkozó vagy családtagjai számára biztosítanak munkát, ám külső munkaerőt csak ritkán alkalmaznak. Jellemző adat, hogy amíg a magyar vállalkozások 75 %-a alkalmazott nélküli, addig az Európai Unió tagállamaiban arányuk csak 52 %. Nemzetközi összehasonlítást alapul véve az is megállapítható, hogy az EU-ban az önfoglalkoztatás magas aránya mindenek előtt a nemrég még az európai fél-perifériához tartozó, kevésbé fejlett mediterrán országokat jellemzi. Az önfoglalkoztatás nagy aránya tehát javarészt a vállalkozói szektor gyengeségét jelzi, ami alapvetően az ország gazdasági elmaradottságával és a kényszervállalkozások nagy számával hozható összefüggésbe.

Az önfoglalkoztatás árnyalt értékelésénél azonban nem hagyható figyelmen kívül az a tény, hogy az élőmunkát terhelő magas elvonások, valamint a bonyolult adminisztratív szabályok miatt a mikro-vállalkozások számára szinte megoldhatatlan problémát jelent az első foglalkoztatott alkalmazása. Ugyancsak nem szabad figyelmen kívül hagyni azt a tényt sem, hogy ezek az önfoglalkoztató vállalkozások a szocialista korszakból örökölt túlfoglalkoztatás viszonylag zökkenőmentes „levezetésében” rendkívül fontos és pozitív szerepet játszottak. Magyarországon az 1990-es évtizedben az önfoglalkoztató vállalkozások gyakorlatilag a tetemes állami kiadással járó munkanélküli ellátási rendszer egyik hatékony alternatíváját képezték.

A magyar szociális biztonsági rendszert szabályozó normákban nem szerepel az önfoglalkoztató elnevezés. A hatályos társadalombiztosítási szabályokban az önfoglalkoztatónak leginkább az egyéni vállalkozó kifejezés felel meg. Ugyanakkor az önfoglalkoztató elnevezés tartalmi meghatározása az EU szakembereinek legfrissebb – viszonylag leegyszerűsített, ugyanakkor jól megfogható – értelmezésében azt jelenti, hogy önfoglalkoztatónak kell tekinteni minden olyan munkavégző személyt, aki nem ún. függő jogi jogviszony (pl. munkaviszony, közalkalmazotti, köztisztviselői, szolgálati, stb.) keretében végez munkát. Másképpen fogalmazva, minden olyan jogviszony ide sorolható, amelyben az illető személy egyidejűleg – társadalombiztosítási fogalmat használva – foglalkoztató és biztosított.

Megfigyelhető, hogy az utóbbi időben – a munkanélküli ellátások kivételével – a magyar szociális biztonságra vonatkozó jogszabályok az önfoglalkoztatókat igyekeznek a munkaviszonyban álló személyekkel azonos elbánásban részesíteni. Ugyanakkor még mindig tapasztalható néhány eltérés (pl. járulékfizetés szabályai, vagy bizonyos önfoglalkoztatói körök önkéntesen kötött megállapodásokkal történő integrálása, stb), amely nem teszi lehetővé, hogy az önfoglalkoztatókra teljesen azonos szabályokat alkalmazzassanak.

Kihangsúlyozzuk, hogy napjainkban az önfoglalkoztatás Magyarországon továbbra is növekvő tendenciát mutat. Ezért nagyon fontos, hogy ezek a munkavégző személyek ugyanolyan feltételekkel legyenek jogosultak szociális ellátásokra, mint a klasszikus értelemben vett munkavállalók.

Jelen dolgozatban az önfoglalkoztató személyekre vonatkozó jelenlegi magyar szociális biztonsági szabályozást tekintettük át.